PENTADBIR TANAH DAERAH MELAKA TENGAH

v.

MAT NAYAN BIN TAK

COURT OF APPEAL, KUALA LUMPUR
DATO' ZAKARIA MOHD. YATIM JCA
DATO' N.H. CHAN JCA
DATO' MAHADEV SHANKAR JCA
[CIVIL APPEAL NO: M-08-189-95]
29 JUNE 1995

CIVIL PROCEDURE: *Appeal - Court of Appeal - Compensation under Land Acquisition Act 1960 - Value of subject matter more than RM5,000 but less than RM250,000 - Leave to appeal - Whether necessary - Courts of Judicature Act 1964 ss. 4, 28, 67, 68 - Land Acquisition Act 1960 ss. 12, 49.*

LAND LAW: *Land acquisition - Award - Compensation more than RM5,000 but less than RM250,000 - Right of appeal to Court of Appeal - Section 49(1) Land Acquisition Act 1960 - Sections 67(1) & 68(1) Courts of Judicature Act 1964 - Whether there was an unqualified right to appeal - Whether leave necessary.*

This was an application for leave to appeal from a decision of the High Court concerning the proper compensation payable under the Land Acquisition Act 1960 (the Act). The facts were that the respondent's land was acquired under the Act and award of compensation was made by the Collector in respect thereof. The respondent was dissatisfied with the award, and so had the matter referred to the High Court. In consequence, the High Court revised the award, in effect increasing it by 177.44% to RM44,964.71.

The Pentadbir Tanah Daerah Melaka Tengah (the applicant) had intended to appeal against the order of the High Court. Accordingly, pursuant to s. 68(1) Courts of Judicature Act 1964 (the Judicature Act), since the value of the subject matter was less than RM250,000, the applicant applied for leave to appeal. Section 68(1)(a) aside, s. 49(1) of the Act however allowed an appeal from the decision of the High Court to the Supreme Court by "any person interested" if the award exceeded RM5,000. In the circumstances, the respondent submitted that no leave was required as s. 49(1) gave the applicant an unqualified right to appeal. In essence, the respondent's argument was that the Act was a self-contained piece of legislation which conferred an independent right of appeal for which no leave was required. Before the appeal Judges, the primary issue that arose was whether, on the facts, bearing in mind the above two sections, and the provisions of ss. 4, 28(1) and 67(1) of the Judicature Act, leave of the Court of Appeal was needed before the applicant could properly proceed with the intended appeal.

Held:

Per Mahadev Shankar JCA:

[1] Section 67 of the Judicature Act provides a right of appeal in respect of a decision of the High Court in any reference from the Collector. The right of appeal under s. 49 of the Act is the same right as conferred by s. 67(1) of the Judicature Act except that the category of permitted appellants under the Act is wider since "any person interested" can appeal.

[2] By s. 67(1) of the Judicature Act, the jurisdiction of the Court of Appeal to hear and determine civil appeals was *"subject to this or any other written law regulating the terms and conditions upon which such appeals shall be brought"*. Hence, whether or not leave should be obtained goes to the *"terms and conditions upon which such appeals shall be brought"*. As to this, the wording of s. 49(2) of the Act is not in any way inconsistent with that of s. 67(1). Both require the appeal to be brought within the time and in the manner provided, that is to say, subject to the Judicature Act and any other law relevant in that behalf.

[3] Section 28(1) of the Judicature Act, which precludes appeals from Subordinate Courts in any civil cause or matter where the amount in dispute is RM10,000 or less except on a question of law, does not affect the right of appeal given by s. 49(1) of the Land Acquisition Act by virtue of the words "subject to any written law" which precede the rest of the said s. 28(1).

[4] In the circumstances, since the amount here is more than RM10,000 but less than RM250,000, leave to appeal is therefore required. Leave is granted and applicant given two weeks to file the notice of appeal.

Per N.H. Chan JCA (concurring):

[1] Although s. 49(1) of the Act says that an appeal from the High Court is to the Supreme Court, nevertheless, it is quite plain that an appeal only lies to the Court of Appeal having regard to ss. 4 and 67(1) of the Judicature Act.

[2] The practical effect of reading s. 49(1) of the Act with ss. 4, 67(1) and 68(1) of the Judicature Act is that, in a land acquisition matter an interested party may appeal from the High Court to the Court of Appeal if the amount is not below RM5,000, and the Court of Appeal has jurisdiction to hear the appeal save that leave of the Court of Appeal is required if the amount or value of the subject matter of the claim is below RM250,000.

[3] In the instant case, since the award was above RM5,000 but below RM250,000, it is appealable from the High Court to the Court of Appeal but only with leave of the Court of Appeal.

[Application for leave granted. Order accordingly]

***[Bahasa Malaysia** Translation of Headnotes]*

***PROSEDUR SIVIL:** Rayuan - Mahkamah Rayuan - Pampasan di bawah Akta Pengambilan Tanah 1960 - Nilai hal-perkara lebih daripada RM5,000 tetapi kurang daripada RM250,000 - Kebenaran untuk merayu - Samada perlu - Akta Mahkamah Kehakiman 1964 ss. 4, 28, 67, 68 - Akta Pengambilan Tanah 1960 ss. 12, 49.*

***UNDANG-UNDANG TANAH:** Pengambilan tanah - Award - Pampasan lebih daripada RM5,000 tetapi kurang daripada RM250,000 - Hak untuk merayu kepada Mahkamah Rayuan - Seksyen 49(1) Akta Pengambilan Tanah 1960 - Seksyen 67(1) & 68(1) Akta Mahkamah Kehakiman 1964 - Samada terdapatnya hak yang tidak layak untuk merayu - Samada kebenaran perlu.*

Ini merupakan satu permohonan untuk mendapatkan kebenaran bagi merayu terhadap keputusan Mahkamah Tinggi berhubung dengan pampasan wajar yang kena dibayar di bawah Akta Pengambilan Tanah 1960 (Akta). Fakta-faktanya adalah bahawa tanah responden telah diperolehi di bawah Akta dan award pampasan telah dibuat oleh Pemungut sehubungan dengannya. Responden tidak berpuashati dengan award itu, dan oleh yang demikian telah merujuk perkara tersebut kepada Mahkamah Tinggi, dan akibat daripada itu, Mahkamah Tinggi tersebut telah menyemak semula award tersebut, pada hakikatnya menambah jumlah tersebut sebanyak 177.4% kepada RM44,964.71.

Pentadbir Tanah Daerah Melaka Tengah (pemohon) bercadang untuk merayu terhadap perintah Mahkamah Tinggi. Sehubungan itu, selaras dengan s. 68(1) Akta Mahkamah Kehakiman 1964 (Akta Kehakiman), oleh kerana nilai hal-perkara tersebut adalah kurang daripada RM250,000, pemohon telah memohon kebenaran untuk merayu. Tanpa menghiraukan s. 68(1)(a), s. 49(1) Akta bagaimanapun membenarkan satu rayuan dibuat terhadap keputusan Mahkamah Tinggi kepada Mahkamah Agung oleh "mana-mana orang yang berkepentingan" sekiranya award terbabit melebihi RM5,000. Dalam keadaan yang sedemikian, responden berhujah bahawa kebenaran tidak diperlukan kerana s. 49(1) telah memberikan pemohon hak yang tidak terbatas untuk merayu. Secara pentingnya, hujahan responden adalah bahawa Akta tersebut merupakan perundangan lengkap yang memberikan hak bebas untuk merayu dimana kebenaran tidak diperlukan. Di hadapan Hakim-Hakim rayuan, isu utama yang berbangkit adalah samada, berdasarkan fakta dan mengambil perhatian terhadap kedua-dua

seksyen di atas, serta peruntukan-peruntukan ss. 4, 28(1) dan 67(1) Akta Kehakiman, kebenaran dari Mahkamah Rayuan adalah perlu sebelum pemohon boleh meneruskan dengan rayuan yang dicadangkan itu.

Diputuskan:

Oleh Mahadev Shankar HMR:

[1] Seksyen 67 Akta Kehakiman memperuntukan hak untuk merayu terhadap keputusan Mahkamah Tinggi yang dibuat berhubung dengan mana-mana rujukan daripada Pemungut. Hak untuk merayu di bawah s. 49 Akta adalah hak yang sama seperti yang diberikan oleh s. 67(1) Akta Kehakiman kecuali kategori perayu-perayu yang dibenarkan di bawah Akta adalah lebih luas oleh kerana "mana-mana orang yang berkepentingan" boleh merayu.

[2] Melalui s. 67(1) Akta Kehakiman bidangkuasa Mahkamah Rayuan untuk mendengar dan menentukan rayuan-rayuan sivil adalah "tertakluk kepada undang-undang ini atau mana-mana undang-undang bertulis lain yang mengatur terma-terma dan syarat-syarat di atas yang mana rayuan yang sedemikian boleh dimulakan." Dengan itu, samada kebenaran harus diperolehi ataupun tidak mempunyai kaitan dengan "terma-terma dan syarat-syarat di atas yang mana rayuan akan dimulakan." Berhubung dengan perkara ini, perkataan s. 49(2) Akta tidaklah dalam apa-apa cara pun tak konsisten dengan perkataan s. 67(1). Kedua-duanya memerlukan rayuan tersebut dimulakan dalam tempoh dan cara yang diperuntukkan, iaitu tertakluk kepada Akta Kehakiman dan mana-mana undang-undang lain yang mempunyai perkaitan dengan perkara ini.

[3] Seksyen 28(1) Akta Kehakiman yang menghalang rayuan daripada Mahkamah Rendah dalam mana-mana perkara atau kausa sivil di mana jumlah yang dipertikaikan adalah RM10,000 atau kurang kecuali atas persoalan undang-undang, tidak menjejaskan hak merayu yang diberikan oleh s. 49(1) Akta Pengambilan Tanah disebabkan oleh perkataan-perkataan "tertakluk kepada mana-mana undang-undang bertulis" yang mendahului bahagian selebihnya dari s. 28(1) tersebut.

[4] Dalam kes ini, oleh kerana jumlah award adalah lebih daripada RM10,000 tetapi kurang daripada RM250,000, kebenaran untuk merayu adalah dengan itu diperlukan. Kebenaran diberikan dan pemohon diberikan tempoh selama 2 minggu untuk memfailkan notis rayuan.

Oleh N.H. Chan HMR (menyetujui):

[1] Walaupun s. 49(1) Akta menyatakan bahawa rayuan daripada Mahkamah Tinggi adalah kepada Mahkamah Agung, namun begitu, ianya agak jelas bahawa sesuatu rayuan hanya tertuju kepada Mahkamah Rayuan, selaras dengan peruntukan ss. 4 dan 67(1) Akta Kehakiman.

[2] Kesan praktikal membaca s. 49(1) Akta dengan ss. 4, 67(1) & 68(1) Akta Kehakiman adalah bahawa, dalam perkara pengambilan tanah, sesuatu pihak yang berkepentingan boleh memohon daripada Mahkamah Tinggi kepada Mahkamah Rayuan jika jumlah tersebut tidak kurang daripada RM5,000 dan Mahkamah Rayuan mempunyai bidangkuasa untuk mendengar rayuan tersebut dengan syarat kebenaran Mahkamah Rayuan diperlukan jika jumlah atau nilai hal-perkara tuntutan tersebut adalah kurang daripada RM250,000.

[3] Dalam kes semasa ini oleh kerana award tersebut melebihi RM5,000 tetapi kurang daripada RM250,000, ianya boleh dirayu daripada Mahkamah Tinggi kepada Mahkamah Rayuan tetapi hanya dengan kebenaran daripada Mahkamah Rayuan.

[Permohonan untuk kebenaran diberikan. Perintah sehubungan dengannya]

Cases referred to:
Wong Kon Sang v. Cheng Litho Press Ltd. [1968] 2 MLJ ***(refd)***
Foo Sey Koh & Ors. v. Chua Seng Seng & Ors. [1968] 1 MLJ 501 ***(refd)***
Dr. Ng Teng Koh & Ors. v. Cheah See Kian & Ors. [1987] 2 MLJ 245 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 4, 28(1), 67(1), 68(1)
Land Acquisition Act 1960, ss. 49(1), (2), 67, (1)
Subordinate Courts Act 1948, s. 70(3)

Other sources referrred to:
"Compulsory Land Acquisition", Salleh Buang, p. 19
"Compulsory Land Acquisition - Singapore and Malaysia" N. Khublall, 2nd Edn., p. 269
Words and Phrases, 3rd Edn.,
Shorter Oxford English Dictionary
Black's Law Dictionary

For the applicant - Abdul Rahman Putra bin Dato' Haji Taha (SFC); (Meor Hashim FC with him); M/s. State Legal Adviser, Malacca
For the respondent - Yusof Rahmat; M/s. Kesavan & Associates, Malacca

JUDGMENT

Mahadev Shankar JCA:

This is an application for leave to appeal from a decision of the High Court, concerning the proper compesation payable under the land Acquisition Act 1960 (the Act).

The subject land is part of Lot 548 in the District of Malacca Tengah. The respondent was dissatisfied with the award of the Collector and had the claim for compensation referred to the High Court. On 25 March 1995 the

Judge of the High Court Malacca increased the Collector's award by 174.44% to RM44,964.71.

Against this increase the applicant seeks leave for appeal.

In the appeal (M-08-197-95) which immediately preceded this one, the learned Senior Federal Counsel had mistakenly applied for leave. The High Court award was in excess of RM250,000. Clearly no leave was necessary. So at the hearing of the motion the learned Senior Federal Counsel withdrew his prayer for leave and sought an extension of time to file the notice of appeal. The respondent objected citing *Chong Kueng Ying and Ors. v. Lovis Lavagna* [1972] MLJ 180 where the Federal Court held that the mistake of a legal advisor is not sufficient ground for granting leave. Consequently we dismissed the application with costs. Seven other cases which were similar were also dismissed.

The present application for leave to appeal was then called up for disposal. The amount of the High Court award here is well below RM250,000. But the respondent's Counsel strenously contended that even here no leave was required because the Act gave the appellant an unqualifed right to appeal if the Collector's award was above RM5,000 and s. 68(l) of the Judicature Act 1964 did not apply.

Section 49 of the Act reads:

> 49. (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to s. 3 may appeal from a decision of the Court to the Supreme Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five thousand ringgit.
>
> (2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in suits in the High Court:
>
> Provided that the time within which an appeal may be presented shall only be capable of enlargement by order of a Court in such special circumstances as the Court may think fit.
>
> (3) (Omitted).

Reference was also made to *"Compulsory Land Acquisition"* by Salleh Buang at page 19 and *"Compulsory Land Acquisition - Singapore and Malaysia"* by N. Khublall (Second Edition) at page 269. These text books merely paraphrase the section and do not carry the matter further.

Section 68(l)(a) of the Judicature Act reads:

68. (1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

The argument was that since s. 68(l)(a) referred to a **"claim"** and s. 49(l) of the Act referred to **"the amount award"** the two statutes had different things in mind and the Act was therefore a self-contained piece of legislation which conferred an independent right of appeal for which no leave was required.

Passages were then cited from *Words and Phrases - Legally Defined* by Butterworths (Third Edition), the *Shorter Oxford English Dictionary,* and *Black's Law Dictionary* to demonstrate what the word **"award"** and **"claim"** meant. We did not find these definitions helpful.

Section 4 of the Judicature Act reads:

4. **Provision to prevent conflict of laws.**

In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

Section 67 of the Judicature Act reads:

67. **Jurisdiction to hear and determine civil appeals**

(1) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

(2) The Courts of Appeal shall have all the powers conferred by s. 24A on the High Court under the provisions relating to references under order of the High Court.

Thus by whatever name a decision of the High Court in any reference from the Collector is called, s. 67 clearly provides a right of appeal to the Court of Appeal. Matters come up to the High Court from the Collector under Part V of the Land Acquisition Act not by way of appeal but by **way of reference.** In other words the jurisdiction of the High Court here is a statutory original jurisdiction. Fresh evidence is usually taken at these hearings. The right of appeal under s. 49 of the Act is the same right conferred by s. 67(l) of the Judicature Act except that the category of permitted appellants under the Act is wider since "any person interested can appeal".

Whether or not leave should be obtained goes to the "terms and conditions upon which such appeals shall be brought'. As to this we do not find the wording of s. 49(2) of the Land Acquisition Act in any way inconsistent with s. 67(l) of the Judicature Act. Both require the appeal to be brought within the time and in the manner provided that is to say subject to the Judicature Act and any other law relevant in that behalf.

Section 12(2) of the Act reads:

> The Land Administrator shall also enquire into the "respective interests of all persons **claiming** compensation or who ... are entitled to compensation.

References to the High Court arise when these people claim for an amount by way of compensation in excess of that which has been awarded by the Land Administrator.

Thus the issue of whether right of appeal is absolute or conditional depends not on a subjective appreciation of what the claimant thinks his property is worth but "the amount or value of the subject-matter of the claim (exclusive of interest) ...

This issue is easily resolved where the claim is a money claim [see *Wong Kon Sang v. Cheng Litho Press Ltd.* [1968] 2 MLJ where the Sessions Court was held to be seized of jurisdiction to try an action even if the value of the counterclaim exceed it]. So also in *Foo Sey Koh & Ors. v. Chua Seng Seng & Ors.* [1968] 1 MLJ 501 where I held that a money claim for principal and interest which came to less than RM25,000 should be filed in the Sessions Court. I touched upon the problems attendant on claims for unliquidated damages which could be thought to be worth more than RM25,000. A similar problem arose in *Dr. Ng. Teng Koh & Ors. v. Cheah See Kian & Ors.* [1987] 2 MLJ 245 where s. 70(3) of the Subordinate Courts Act 1948 was considered and it was held that the issue of jurisdiction was to be determined solely by the amount of the rent claimed, and not the *mesne* profits which could also be awarded upon judgment.

These cases are not quite in point on the approach the Court should adopt where the parties disagree as to the real monetary value of the subject-matter of the claim, nor do we need to decide the matter here.

Since there are 69 other applications before us today whose fate hinges on this one, we feel obliged to comment on s. 28(l) of Judicature Act which precludes appeals from Subordinate Ccurts in any civil cause or matter where the amount in dispute or the value of the subject-matter is RM10,000 or less except on a question of law.

It is the opinion of this Court that this section does not affect the right of appeal given by s. 49(l) of the Land Acquisition Act by virtue of the words,

"Subject to any other written law ..." which precede the rest of the section 28(l) of the Judicature Act.

Accordingly we granted leave to appeal in this matter and in the other 69 matters which followed since in every case the amount was more than RM10,000 but less than RM250,000. We gave the applicants two weeks to file the notice of appeal and directed that the costs be treated as costs in the cause or to put it correctly to abide the result on the appeal.

N.H. Chan JCA:

I have had the advantage of reading the judgment of my learned brother Shankar JCA in draft and I agree that leave should be granted to appeal from the decision of the High Court to the Court of Appeal in this matter under the Land Acquisition Act 1960. The question is whether leave from the Court of Appeal is required to appeal in a land acquisition matter.

Section 49(l) of the Land Acquisition Act 1960 reads:

> 49. (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to s. 3 may appeal from a decision of the Court to the Supreme Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five-thousand ringgit.

Section 67(l) of the Courts of Judicature Act 1964 reads:

> 67. (l) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate juridisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

Put shortly, s. 49(l) of the Land Acquisition Act says that any interested person may appeal from the decision of the High Court to the "Supreme Court" but, according to the proviso, there will be no appeal if the amount of the award is less than RM5,000. And s. 67(l) of the Courts of Judicature Act says that the Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court.

Although s. 49 (1) Land Acquisition Act says that an appeal from the High Court is to the Supreme Court (now named Federal Court), nevertheless, it is quite plain that an appeal only lies to the Court of Appeal (s. 67(l) Courts of Judicature Act) which has jurisdiction to hear appeals from the High Court (and not to the Federal Court which jurisdiction is to hear appeals from the Court of Appeal). See s. 4 of the Courts of Judicature Act which reads:

4. In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

However, the Courts of Judicature Act also provides in s. 68(l)(a) that an appeal requires leave if the amount or value of the subject matter of the claim is less than RM250,000. Of course, no leave is required if the amount or value exceeds that amount. The section reads:

68. (1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subJectmatter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal.

The upshot of all this is that, in a land acquisition matter an interested party may appeal (s. 49(l) Land Acquisition Act) from the High Court to the Court of Appeal if the amount of the award is not below RM5,000, and the Court of Appeal has jurisdiction (s. 67(l) read with s. 4 Courts of Judicature Act) to hear the appeal save that leave of the Court of Appeal is required if the amount or value of the subject matter of the claim is below RM250,000 (s. 68(1) (a) Courts of Judicature Act).

In the instant case and in the other 69 cases, since the award in every case was above RM5,000 but below RM250,000, they are appealable from the High Court to the Court of Appeal but only with leave of the Court of Appeal.

Zakaria Mohd Yatim JCA:

I have read the judgments of my learned brothers N.H. Chan JCA and Mahadev Shankar JCA and I entirely agree with their judgments.

Reported by W.A. Sharif